

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Kelley Analyst: Roger Lackey Bill Number: SB 284

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-06-99

Attorney: Doug Bramhall Sponsor:

SUBJECT: Secretary of State

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 2, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would provide that upon a corporate merger, the surviving domestic corporation would assume the liability of the disappearing corporation and file the required tax and information returns. In addition, this bill would require under certain circumstances that the Secretary of State (SOS) file the merger without a certificate of satisfaction from the Franchise Tax Board (FTB).

Also, **this bill** would provide that a registered foreign limited liability partnership that ceases to be such an entity must file a tax clearance certificate received from the FTB with the notice filed with the SOS that it is no longer a limited liability partnership.

This bill would make several miscellaneous amendments to various California codes, which would not impact the department. These amendments will not be addressed in this analysis.

The April 6, 1999, amendment would require that the SOS prepare and submit a report to the Legislature regarding any rules or regulations adopted to authorize the electronic filing of documents with the SOS. In addition, the amendment deleted language regarding the SOS and sellers of seller assisted marketing plans.

The March 9, 1999, amendment accepted the technical amendments proposed in the department's prior analysis and made several other technical and grammatical changes to various codes. The department's suggested amendment to resolve an implementation concern was not accepted. The implementation considerations and related amendment provided in the department's previous analysis are included below.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas **4/15/1999**

Other than the resolution of the technical concerns, the department's analysis of SB 284 as introduced February 2, 1999, still applies.

Implementation Considerations

Current law provides that upon the corporation's winding up, a majority of the directors of the corporation are to sign a certificate of dissolution verifying certain events have taken place. This bill would add to those events "the tax liability **will be** satisfied on a taxes paid basis." Such a statement may allow a corporation to receive a tax clearance certificate from the Franchise Tax Board and dissolve without resolving its tax liability. Amendment 1 could eliminate that possibility.

Currently, the Revenue and Taxation Code requires that a registered LLP obtain a tax clearance certificate from the FTB prior to the SOS' filing of a certificate of dissolution, cancellation, or withdrawal or any other document by which the term of existence of a registered LLP is reduced or terminated. A foreign LLP must obtain a tax clearance before the SOS is authorized to file an amended registration or a notice of withdrawal or dissolution and winding up. For Corporations Code purposes, an unregistered LLP is not recognized as an LLP. With the suggested amendment to Corporations Code, this bill would duplicate provisions of the Revenue and Taxation Code and clarify the SOS' duties regarding the filing of a certificate of dissolution, cancellation, or withdrawal upon the issuance of a tax clearance certificate by the FTB.

Once the implementation concerns are addressed, implementing this bill would not significantly impact the department's programs and operations.

Analyst	Roger Lackey
Telephone #	845-3627
Attorney	Doug Bramhall

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 284
As Amended April 6, 1999

AMENDMENT 1

On page 23, line 25, strike out "will be" and insert:

has been